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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/076,517	05/12/1998	DAOZHENG LU	28049/34394	4933

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EXAMINER
GRANT, CHRISTOPHER C

ART UNIT	PAPER NUMBER
2611	

DATE MAILED: 11/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/076,517	Applicant(s) Lu et al.
	Examiner Christopher Grant	Art Unit 2611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *Aug 28, 2002* .

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *70, 71, and 159* is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *70, 71, and 159* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
4) ☐ Interview Summary (PTO-413) Paper No(s). _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 70, 71 and 159 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The specification fails to support "*An audience rating system....for digital television and radio*" now recited in claim 159.

The specification fails to support the step of "*recording the time that reception by the receiver is ended*" now recited in claim 70.

The above limitations are considered as new matter and they must be canceled from the claims.

2. The amendment filed 8/28/2002 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows:

(a) the paragraph bridging pages 48-49 beginning at "**As described at Column 16, lines 8-29 of U.S. patent No. 5,481,294**" and ending at "**(at yet a later time) to a different channel carrying another program**".

(b) the paragraph bridging pages 53-54 beginning at "**As described at Column 6, lines 9-15 of U.S. patent No. 5,594,934**" and ending at "**(head-ends for transmitting cable channel and/or the like**".

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

4. Claims 70-71 are rejected under 35 U.S.C. 102(e) as being anticipated by Aras et al. (Aras) (of record).

Considering claim 70, Aras discloses an audience measurement method for digital television comprising the steps of:

a) extracting at least one identification code (e.g. a first AVI, 343-567-231 - figure 12) from at least one digital multiplexed stream (col. 6, line 45 - col. 7, line 5) of a first channel, from a

control stream (AVI is a control stream or the control stream in MPEG processing described at col. 6, lines 64) of a multiplexed digital transmission, when reception of the first channel by a receiver (1558,1559, 1561) begins (see the entire reference including but not limited to col. 7, line 30 - col. 8, line 37, col. 13, lines 53-58, col. 20, lines 15-33 and col. 24, line 61 - col. 25, line 21);

b) recording the at least one identification code extracted and the time that reception of the first channel begins (see the entire reference including but not limited to col. 8, line 52-col. 9, line 16, col. 14, lines 8-24 and col. col. 20, lines 15-40, wherein the time may be time index (207-figure 2 or 603-figure 12 or start/end times such as 609-start time, 611-end time);

c) extracting at least one identification code (e.g. a subsequent AVI, 565-778-543 - figure 12) from at least one digital multiplexed stream (col. 6, line 45 - col. 7, line 5) of any subsequent channel, from a control stream (AVI is a control stream or the control stream in MPEG processing described at col. 6, lines 64), when reception of the subsequent channel by the receiver begins (see the entire reference including but not limited to col. 7, line 30 - col. 8, line 37, col. 13, lines 53-58, col. 20, lines 15-33 and col. 24, line 61 - col. 25, line 21); and

d) recording the at least one identification code extracted and the time that reception of the subsequent channel begins (see the entire reference including but not limited to col. 8, line 52-col.

9, line 16, col. 14, lines 8-24 and col. col. 20, lines 15-40, wherein the time may be time index (207-figure 2 or 603-figure 12 or start/end times such as 609-start time, 611-end time)

Claim 71 is met by the time information described throughout the entire reference including but not limited to col. 8, line 52-col. 9, line 16, col. 14, lines 8-24 and col. col. 20, lines 15-40, wherein the time may be time index (207-figure 2 or 603-figure 12 or start/end times such as 609-start time, 611-end time).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claim 159 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aras.

Considering claim 159, Aras discloses that his invention relates to a method and apparatus for collecting subscriber behavior in a broadcast and/or interactive environment (col. 1, lines 15-18) and that the collected information is used for statistical analysis by market research companies

(col. 1, line 50 - col. 2, line 41) Aras also discloses that the system can be modified at col. 27, lines 9-11.

However, he fails to specifically disclose that the audience rating system is for radio as recited in the claim.

The prior art is replete with numerous examples of collecting broadcast audience behavior for statistical analysis purposes by Market Research companies. For example, a Market Research company estimating market share to determine advertisement rates. First, note that patents 4,718,106, 4,955,070, WO 91/11062, WO 94/11989, 5,526,427, 5,574,962 (provided by Applicant in the IDS filed 6/22/2001) all disclose collecting behavior from radio and/or television audiences. Secondly, note that patent 5,594,934 (Lu et) describes audience measurement system for television and radio (See the instant application at page 3, line 5, the IDS filed by applicant on 6/22/2001 and the Declaration provided by Michael Dolan at page 3). Thirdly, television and radio are technically related and are represent by the leading alliance for broadcast signals (National Association of Broadcasters) (See the Declaration provided by Michael A. Dolan at page 3).

It would have been obvious to one of ordinary skill in the art to modify Aras' system (if necessary) to include any broadcast media, such as radio, for the typical advantage of collecting audience behavior for statistical analysis by Market Research companies.

Note to Applicant

7. Applicant's request for interference with a patent under 37 CFR 1.607 is noted. However, an interference can not be declared at this time because the claims in the instant application are rejected under 35 USC 102, 103 and 112 first paragraph as described above.

8. Some of the references listed in the petition to make special under 37 CFR 1.102 (filed 6/22/2001) were not provided by applicant. Applicant should provide the references and a form 1449 for consideration by the examiner.

Response to Arguments and Amendment

9. Applicant's arguments filed 8/28/2002 have been fully considered but they are not persuasive.

Response to applicant's arguments

a) Applicant argues the "**And radio**" issue at page 7-8 of the amendment and pages 3-4 of the Declaration submitted 8/28/2002.

In response, the Examiner posits the following:

(a1) That Applicant's specification at page 1, lines 10-11 is clearly discussing the prior art and not applicant's invention.

(a2) That the incorporation by reference to 5,594,934 (Lu et al.) discloses radio in the prior art section of the instant application. However, the instant application does not describe how radio is utilized in the instant invention. The patent relied upon is for an analog audio and/or video system while the instant invention is for a digital television system (packet based system).

(a3) It is true that the "National Association of Broadcasters represents both television and radio broadcasters". However, it was not disclosed by Applicant at the time of filing of the instant application and more importantly it has no merit in relation to Applicant's invention.

b) Applicant argues the "**Recording the time when reception by the receiver is ended**" issue at page 13-15 of the amendment and pages 9-10 of the Declaration submitted 8/28/2002.

In response, the Examiner posits the following:

(b1) That the incorporation by reference to 4,697,209 (Lu et al.) discloses "**..receiver on and off events**" in the prior art section of the instant application. However, the instant application does not describe how "recording the time when reception by the receiver is ended" is utilized in the instant invention. The patent relied upon is for an analog audio and/or video system while the instant invention is for a digital television system (packet based system).

(b2) Block 516 of figure 7 in the instant application is referring to television signals that **are not packets** (i.e. not digital).

(b3) That the incorporation by reference to 5,481,294 discloses "**...records the time that the receiver undergoes ON/OFF change**" in the prior art section of the instant application. However, the instant application does not describe how "recording the time when reception by the receiver is ended" is utilized in the instant invention. The patent relied upon is for an analog audio and/or video system while the instant invention is for a digital television system (packet based system).

Response to Applicant's Amendment

Applicant's attempt to insert subject matter from patents cited as incorporated by reference (from the prior art section of the instant application) to cherry picked sections of Applicant's invention is improper for the following reasons: (a) at the time of filing the instant application, Applicant did not disclose the relationship of the newly selected subject matter to the instant invention and (b) the patents relied upon are for analog audio and/or video systems while the instant invention is for a digital television system (packet based system).

Conclusion

10. **Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 872-9314 (for formal communications intended for entry and for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington. VA., Sixth Floor (Receptionist).

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chris Grant whose telephone number is (703) 305-4755. The examiner can normally be reached on Monday-Friday from 8:00am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Faile, can be reached on (703) 305-4380.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to customer service whose telephone number is (703) 306 0377.

Christopher Grant

Christopher Grant
Primary Examiner
November 16, 2002